

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No: 10/629,308
Applicant: Zhong ZHANG *et al.*
Filed: July 29, 2003
Title: AQUEOUS 2,6-DIISOPROPYLPHENOL PHARMACEUTICAL COMPOSITIONS
TC/A.U.: 1618
Examiner: Shirley V. Gembeh
Confirmation No.: 6429
Docket No.: J&J-100US

**REQUEST FOR RECONSIDERATION OF PATENT TERM
ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This request under 37 C.F.R. § 1.705(b) is for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on September 24, 2010. The Office has determined that the patent term adjustment (PTA) is eleven (11) days. Applicants believe the Office has incorrectly calculated the PTA of eleven (11) days and that they are entitled to zero (0) days of PTA. Applicants are filing their request for reconsideration within the time set forth by 37 C.F.R. § 1.705(b) with the fee required under 37 C.F.R. § 1.18(e).

STATEMENT OF FACTS UNDER 37 C.F.R. §§ 1.705(b)(2)

Applicants do not dispute the PTO's calculation of 507 days of examination delay under 37 C.F.R. §§ 1.702 and 1.703. 37 C.F.R. §§ 1.705(b)(2)(i) and (ii).

Any patent granted on the present application is subject to a terminal disclaimer as specified in the Terminal Disclaimer filed on March 22, 2010. 37 C.F.R. § 1.705(b)(2)(iii).

Applicants note three errors in the PTO's calculation of 496 days during which Applicants failed to engage in reasonable efforts to conclude prosecution of the application ("Applicant Delay") under 37 C.F.R. § 1.704. 37 C.F.R. § 1.705(b)(2)(iv). In particular, Applicants believe the correct number of days of Applicant Delay should be 693 days, as set forth below:

(1) The PTO's PTA calculation does not account for a Supplemental IDS filed by Applicants on May 14, 2007. The Supplemental IDS of May 14, 2007 was submitted 131 days after an amendment was submitted on January 3, 2007. Therefore, under 37 C.F.R. § 1.704(c)(8), the total number of days of Applicant Delay under 37 C.F.R. § 1.704 should be increased by 131 days.

(2) The PTO's PTA calculation indicates that an Amendment was filed on March 17, 2010, followed by a Terminal Disclaimer on March 22, 2010, thereby accounting for 5 days of Applicant Delay. However, the Amendment was actually filed on March 22, 2010. Therefore, the total number of days of Applicant Delay under 37 C.F.R. § 1.704 should be reduced by 5 days.

(3) The PTO's PTA calculation does not account for a Supplemental IDS filed by Applicants on July 15, 2010, after a notice of allowance had been mailed. A second notice of allowance was mailed 71 days after the Supplemental IDS of July 15, 2010 was submitted. Therefore, under 37 C.F.R. § 1.704(c)(10), the total number of days of Applicant Delay under 37 C.F.R. § 1.704 should be increased by 71 days.

Due to the errors described above in (1)-(3), the PTO calculation of 496 days of Applicant Delay under 37 C.F.R. § 1.704 should be adjusted as follows: 496 days + 131 days - 5 days + 71 days = 693 days. Because the total number of days of Applicant Delay under 37 C.F.R. § 1.704 (693 days) exceeds the total number of days of examination delay under 37 C.F.R. § 1.703 (507 days), it is believed Applicants are entitled to zero (0) days of PTA.

Please charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

Respectfully submitted,



Glenn E. J. Murphy, Reg. No. 33,539
Lisa Mead, Reg. No. 64,253
Attorneys for Applicants

GEJM/LM/pbm

Dated: December 22, 2010

P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

The Director is hereby authorized to charge or credit Deposit Account No. **18-0350** for any additional fees, or any underpayment or credit for overpayment in connection herewith.

1088011